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FEDERAL TRADE COMMISSION

16 CFR Part 305

[RIN 3084-AB15]

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act (“Appliance Labeling Rule”)

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes several amendments to improve the Appliance Labeling Rule by streamlining requirements for manufacturers, increasing the availability of labels for consumers, and clarifying various aspects of the Rule. Specifically, the proposed amendments would eliminate duplicative reporting requirements for manufacturers, introduce a uniform method for attaching labels to appliances, place EnergyGuide labels on room air conditioner boxes instead of on the products themselves, improve current website disclosures, and revise ceiling fan labels. The proposed amendments also would clarify enforcement rules for data reporting, testing access, and website disclosures. The Commission requests comments on these proposed changes. In addition, as a part of the Commission’s systematic review of its regulations and guides, the Commission seeks comments on the Rule’s overall costs and benefits and its overall regulatory and economic impact.

DATES: Written comments must be received by May 16, 2012.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form by following the instructions in section VI. of the **SUPPLEMENTARY INFORMATION** section below. Comments in electronic form should be submitted using the following weblink: <https://ftcpublic.commentworks.com/ftc/energylabelingamendmentsnprm> (and following the instructions on the web-based form). Comments filed in paper form should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex A), 600 Pennsylvania Avenue, N.W., Washington, DC 20580, in the manner detailed in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, (202) 326-2889, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Room M-8102B, 600 Pennsylvania Avenue, N.W., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. FTC's Appliance Labeling Rule

The Commission's Appliance Labeling Rule, issued pursuant to the Energy Policy and Conservation Act (EPCA),¹ requires energy labeling for major household appliances and other consumer products to help consumers compare competing models.² When first published in 1979,³ the Rule applied to eight appliance categories: refrigerators, refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners, and furnaces.

¹42 U.S.C. 6291 *et seq.*

²For more information about the Rule, see <http://www.ftc.gov/appliances>.

³44 FR 66466 (Nov. 19, 1979).

Subsequently, the Commission expanded the Rule's coverage to include categories such as central air conditioners, heat pumps, plumbing products, lighting products, ceiling fans, and televisions.⁴

The Rule requires manufacturers to attach yellow EnergyGuide labels to certain covered products.⁵ It prohibits retailers from removing these labels or rendering them illegible.⁶ In addition, the Rule directs sellers, including retailers, to post label information on websites and in paper catalogs from which consumers can order covered products.⁷

EnergyGuide labels for appliances and televisions contain three key disclosures: estimated annual operating cost (for most products), a “range of comparability” showing the highest and lowest energy consumption or efficiencies for all similar models, and a product's energy consumption or energy efficiency rating as determined from standard Department of Energy (DOE) tests. The Rule specifies this content as well as the label's format. Manufacturers

⁴See 52 FR 46888 (Dec. 10, 1987) (central air conditioners and heat pumps); 54 FR 28031 (Jul. 5, 1989) (fluorescent lamp ballasts); 58 FR 54955 (Oct. 25, 1993) (certain plumbing products); 59 FR 25176 (May 13, 1994) (lighting products); 59 FR 49556 (Sep. 28, 1994) (pool heaters); 71 FR 78057 (Dec. 26, 2006) (ceiling fans); and 76 FR 1038 (Jan. 6, 2011) (televisions).

⁵See 42 U.S.C. 6302(a)(1); 16 CFR 305.4(a)(1). The Rule requires an energy disclosure or label on all covered products or on their packages. The EnergyGuide label must appear on refrigerators, refrigerator-freezers, freezers, room air conditioners, clothes washers, dishwashers, pool heaters, central air conditioners, heat pumps, furnaces, and televisions. See 16 CFR 305.11, 305.12, 305.14, and 305.17. The EnergyGuide label constitutes a visually uniform “brand” for all these products, but it has different dimensions and disclosures based on the nature and energy use of the product. See 16 CFR 305 Appx. L (label prototypes). Ceiling fans must bear labels somewhat similar to EnergyGuide labels, but visually distinct. 16 CFR 305.13. The remainder of the Rule's covered products bear other types of labels or disclosures related to energy or water use (for plumbing products), rather than the EnergyGuide brand. For example, common consumer light bulbs manufactured beginning in 2012 must bear a “Lighting Facts” label.

⁶See 16 CFR 305.4(a)(2); 42 U.S.C. 6302(a)(2).

cannot place any information on the label other than that specifically allowed by the Rule.

Finally, the Rule contains reporting requirements for most products. Under these requirements, manufacturers must submit data to the FTC both when they begin manufacturing new models and annually.⁸ These reports must contain, among other things, estimated annual energy consumption or energy efficiency ratings.

II. Proposed Amendments

The Commission seeks comment on several proposed changes to reduce the Rule's reporting burdens, increase the availability of energy labels to consumers, and generally to improve existing requirements. Specifically, the proposed changes would: 1) eliminate duplicative requirements by harmonizing FTC and DOE reporting and testing rules; 2) prohibit hang tag labels for all covered clothes washers, dishwashers, and refrigerators and instead require adhesive labels; 3) require placement of room air conditioner labels on display boxes instead of on the product; 4) improve retailer website and paper catalog disclosures; 5) include estimated operating cost information on ceiling fan labels; 6) include specific capacity numbers on clothes washer EnergyGuide labels; 7) require a QR ("Quick Response") code on EnergyGuide labels to link mobile phone users to FTC and DOE information; 8) update product definitions for refrigerators and freezers; 9) clarify the Rule's enforcement provisions; and 10) shorten the Rule's title.⁹ The following addresses each of these proposals in detail.

⁷See 16 CFR 305.20; 42 U.S.C. 6296(a).

⁸See 16 CFR 305.8; 42 U.S.C. 6296(b).

⁹The Commission is also proposing several technical corrections described in section III.

A. Harmonization of Reporting and Testing Requirements

By harmonizing existing FTC and DOE regulations, the proposed amendments would streamline existing reporting requirements. Currently, the FTC requires manufacturers to submit annual reports containing energy-related information about their covered products.¹⁰ Similarly, DOE requires manufacturers to submit reports certifying that their new products meet federal efficiency standards.¹¹ The proposed amendments would streamline the Rule's reporting burden in three ways.¹²

First, under current rules, manufacturers of each covered product must submit one report to DOE and another, largely duplicative report to the FTC. The proposed amendments would allow manufacturers to meet FTC reporting requirements by using DOE's new web-based tool for energy reporting (the "Compliance and Certification Management System" (CCMS)).¹³ Once manufacturers upload their data, the FTC would be able to obtain the information from DOE and place it on the public record.¹⁴ This change would ease reporting for manufacturers and

¹⁰See 16 CFR 305.8; 42 U.S.C. 6296(b)(4). In addition to annual reports, manufacturers must submit a report for each new model prior to distribution of that model.

¹¹See 10 CFR Part 430; 42 U.S.C. 6296.

¹²These amendments would not affect televisions and LED bulbs because the Rule's reporting requirements do not apply to those products. 76 FR 1038, 1040 n.28 (Jan. 6, 2011). The Rule does not currently require reporting for televisions and light-emitting diode lamps because no DOE test procedures exist for those products at this time.

¹³75 FR 27183 (May 14, 2010).

¹⁴See 16 CFR 4.9(b)(10)(xii).

eliminate confusion caused by two separate government data collection requirements for identical products.¹⁵

Second, the Commission proposes to harmonize FTC reporting requirements with DOE certification rules. To achieve this goal, the Commission proposes requiring the same report content as DOE. However, for ceiling fans, the FTC will continue to maintain separate reporting requirements because DOE's regulations contain test procedures for these products but do not currently require manufacturers to conduct such tests.

Third, the Commission proposes to clarify the DOE testing requirements manufacturers must use to determine energy information for FTC labels. The current FTC Rule requires adherence to applicable DOE test procedures, but does not mention several DOE requirements related to testing, including sampling rules, testing accreditation (for light bulbs), and DOE testing waiver procedures. The amendments would specify that manufacturers must test their products in accordance with these applicable DOE requirements.¹⁶ This amendment should eliminate any confusion among manufacturers and, therefore, ensure that the content of energy disclosures on the FTC labels is based on all DOE-required testing provisions.¹⁷

¹⁵The Commission does not propose to eliminate FTC reporting requirements altogether because EPCA requires manufacturers to submit annual reports to the FTC containing "relevant data respecting energy consumption and water use developed in accordance with" applicable DOE test procedures. 42 U.S.C. 6296(b)(4).

¹⁶Unless otherwise specified in the Rule, the Commission does not propose to require compliance with any DOE testing provisions that are not required for DOE certification (*e.g.*, certain lamp measurements). This will ensure that FTC does not inadvertently impose more specific testing burdens than DOE.

¹⁷The proposed amendments also eliminate various references to recommended IES test procedures of incandescent and compact fluorescent lamps that are now covered by DOE testing requirements. Comments should address whether any of these references should remain in the

The Commission seeks comments on these proposals, including the length of time required to implement these changes, the need for the changes, and the costs and benefits of the proposals.

B. Adhesive Labels for Clothes Washers, Dishwashers, and Refrigerators

To improve the availability of EnergyGuide labels for clothes washers, dishwashers, and refrigerators, the Commission proposes to prohibit hang tags on these products and, instead, require adhesive labels.¹⁸ Under the current Rule, these products must display EnergyGuide labels in a location visible to consumers either in the form of a hang tag attached inside the product or an adhesive labels affixed outside or inside the product. The proposal to eliminate hang tags and require adhesive labels is designed to decrease the number of missing labels in showrooms because hang tags appear to detach easily.¹⁹

Evidence gathered by the FTC and the Government Accountability Office (GAO) demonstrates that many showroom products do not have EnergyGuide labels attached. Specifically, GAO visits to 30 stores in 2007 found that 26 percent of products examined had no EnergyGuide label and another 24 percent had labels that were “no longer affixed in a prominent and easily accessible location.”²⁰ Following the GAO report, FTC staff conducted its own

Rule and, if so, why.

¹⁸The Commission’s recent television labeling rule prohibits hang tags on televisions for the same reasons given here. *See* 76 FR 1038.

¹⁹The current Rule defines a hang tag for clothes washers, dishwashers, and refrigerators as a label “affixed to the product . . . using string or similar material.” 16 CFR 305.11(d)(2). Because the Rule does not allow hang tags on product exteriors, manufacturers cannot use hang tags on water heaters and other products that do not have an interior visible to consumers.

²⁰United States GAO, Energy Efficiency – Opportunities Exist for Federal Agencies to Better

examination of more than 8,500 appliances in 89 retail locations.²¹ The FTC found labels either detached or missing altogether on approximately 38 percent of appliances examined.²²

Comments received in the television rulemaking indicated that hang tags often become twisted or dislodged in stores.²³ In addition, FTC staff found that products frequently labeled with hang tags (*i.e.*, clothes washers, dishwashers, and refrigerator-freezers) are more likely to have detached or missing labels compared to water heaters, which are generally labeled with adhesive labels.²⁴ The Commission, therefore, is concerned that hang tags may be more prone to detachment than adhesive labels and offer a less secure means to affix labels.

Accordingly, the Commission seeks comment on whether requiring adhesive labels (and prohibiting hang tags) for clothes washers, dishwashers, and refrigerators would improve label

Inform Household Consumers, GAO-07-1162, Sept. 2007, at 6.

²¹The staff visited stores in nine metropolitan areas across the country in 2008. The results are not necessarily nationally representative.

²²The staff examined clothes washers, dishwashers, refrigerator products (freezers, refrigerators, and refrigerator-freezers), room air conditioners, and water heaters. The examination did not find specific models or brands consistently missing labels. Accordingly, the visits provided no clear evidence that specific manufacturers are routinely failing to label their products.

²³76 FR at 1044.

²⁴ The store visit data indicate that dishwashers, clothes washers, and refrigerator-freezers frequently bear hang tags because the many of these products had hang tags either attached to the product or lying detached on or in the product (64% for dishwashers, 49% for clothes washers, and 76% for refrigerator-freezers.) By contrast, the results indicate water heaters predominately bear adhesive labels (82% had adhesive labels attached, and there were no detached hang tags found near or on the unlabeled units). Moreover, the products that frequently bear hang tags had a high rate of missing and/or detached labels (31% missing and 25% detached for clothes washers; 26% missing and 24% detached for dishwashers; 12% missing labels and 11% detached for refrigerators, freezers, and refrigerator-freezers.) By contrast, only 14% of water heaters were missing labels (and none had detached labels).

availability in showrooms.²⁵ If a comment indicates such a change would improve the label's effectiveness, please explain why. If not, please explain why not. Comments should identify the time required by industry members to switch to adhesive labels without undue burden, whether there are alternative approaches to reduce the burden of such changes, and whether the proposal accomplishes the Commission's goal of providing disclosures to consumers. Also, because dishwashers and clothes washers may have limited interior surface area for adhesive labels, the Commission asks whether the EnergyGuide label for these products should be smaller. Should the Commission adopt a smaller label size, comments should also address whether the text size, graphics, and wording for the current label should, if possible, remain the same as the current label. The Commission developed the current content and format of the label after conducting extensive consumer research, and therefore, is concerned that content changes to accommodate a smaller label would reduce the label's effectiveness for consumers.²⁶ Comments should address whether a smaller label would decrease the label's utility in helping consumers make purchasing decisions and, if so, how.

C. Room Air Conditioners

The Commission proposes requiring manufacturers to print or affix EnergyGuide labels on room air conditioner boxes instead of adhering them to the units themselves. Under the current Rule, manufacturers must place an adhesive EnergyGuide label on the exterior of room air conditioners. However, FTC staff has observed that retailers often display these products in

²⁵The proposed rule language specifies that manufacturers must attach adhesive labels to the product before distribution in commerce. Manufacturers should not place the labels separately in literature bags or otherwise leave labels unattached when shipping units.

²⁶72 FR 49948 (Aug. 27, 2007).

boxes stacked on shelves or the showroom floor. Therefore, consumers cannot examine the label before purchase. The proposed box label would address this concern.²⁷ The Commission proposes to provide manufacturers with at least two years to implement this change to minimize the burdens associated with package changes.

The Commission seeks comments on this proposal. In particular, comments should address whether retailers typically display room air conditioners in or out of the box, and whether the proposal would accomplish the Commission's goal of consistently providing energy disclosures to consumers. Comments should provide detailed information about the costs of the proposed change, including whether two years is sufficient lead time to come into compliance with a package label requirement without undue burden, or whether the changes can be made more quickly. Finally, comments should address whether the Commission should require labels on boxes for any other covered products (*e.g.*, water heaters or pool heaters) in lieu of the existing labels affixed directly to those products.

D. Website and Paper Catalog Disclosures

The Commission proposes several amendments to enhance the energy information available to consumers in “catalogs” (*i.e.*, print catalogs and websites selling covered products).²⁸ First, the amendments would require retail websites to post the full EnergyGuide or Lighting

²⁷The Commission has followed this approach with ceiling fan labels, which must appear on the principal display panel of packages. *See* 16 CFR 305.13.

²⁸These proposed amendments preserve the current Rule's definition of “catalog” to encompass both print and online formats. The current rule defines “catalog” as “printed material, including material disseminated over the Internet, which contains the terms of sale, retail price, and instructions for ordering, from which a retail consumer can order a covered product.” 16 CFR 305.2(h).

Facts label online.²⁹ The Rule would require these websites to post the full label or to use an FTC-provided icon to link consumers to the full version of the EnergyGuide or Lighting Facts label. Second, to ensure that retail websites have access to the label, the amendments would require that manufacturers make the EnergyGuide and Lighting Facts labels easily available online. Third, the proposed amendments provide specifications that retail websites must follow for the format and placement of the required information (*e.g.*, label or icon). Finally, for paper catalogs, the proposed amendments would continue to allow retailers to use an abbreviated text disclosure in lieu of the full label, due to space and cost constraints.

Under the proposed amendments, websites selling EnergyGuide- or Lighting Facts-labeled products would be required to display the full label (either on the product page or through a link). The current Rule does not require websites (or paper catalogs) to include the full label, and instead allows an abbreviated, text-only disclosure. The Commission allowed these abbreviated disclosures due to space constraints and the costs of printing the full label would impose on marketers.³⁰ However, in reaching this decision, the Commission did not examine the differences between websites and paper catalogs and their relative capacities to display information. Subsequently, during the television labeling rulemaking, the Commission determined that while paper catalogs continue to have space constraints and associated costs justifying the abbreviated disclosures, this rationale does not apply to websites. Accordingly, the Commission required websites selling televisions to include the full label or a special icon

²⁹This proposal is consistent with current requirements for television labels. *See* 76 FR 1038.

³⁰72 FR 49948, 49961 (Aug. 29, 2007).

linking to the label.³¹ For the same reasons, the Commission now proposes to require websites to include the full label for all EnergyGuide and Lighting Facts-labeled products they sell.

Under the proposal, websites either could place the full label on the product's detailed description page, or, to minimize design impact on their sites, they could use a small EnergyGuide or Lighting Facts logo icon provided by FTC to link to the full label. The proposed rule allows websites to scale the icon (as well as the label) appropriately to accommodate their layout as long they remain readable and recognizable. The new icon would apply to all products subject to the EnergyGuide or Lighting Facts requirements, including televisions.

Recently, a group of petitioners raised concerns that consumers may view the icon as an endorsement or general claim about a product's environmental quality, rather than as an energy cost disclosure.³² The petitioners also noted that some websites already voluntarily display an EnergyGuide icon, but create confusion by adding text (*e.g.*, "EnergyGuide rated") which might imply to consumers that the icon constitutes an endorsement or a general environmental claim.³³ In light of these concerns, the Commission proposes an icon which integrates the text "Click for this product's energy information" into the icon design. This additional text is designed to help consumers understand that the icon is a link to label information, and not a product endorsement

³¹76 FR 1038.

³² Petition of American Council for an Energy Efficient Economy, Consumers Union, and Public Citizen, 10 (July 22, 2011), available at <http://earthjustice.org/sites/default/files/Petition-to-amend-catalog-rule.pdf>.

³³*Id.*

or environmental claim.³⁴ The Commission seeks comment on this proposal.

The petitioners also argued that in light of potential confusion, the Commission should not allow an icon at all, and should instead require the full label on the main product pages. The Commission seeks comment on whether requiring the full label, instead of a link to the label, is necessary. In particular, commenters should consider whether such a requirement would unduly impede website design and whether the use of the icon with the explanatory text, as proposed in this notice, would address the concern raised by the petitioners.

Second, to facilitate retailer compliance with the Rule, the proposed amendments require that manufacturers make images of their labels available on a website for linking and downloading by both paper catalogs and websites. Under the proposal, the labels must remain available online for two years after the manufacturer ceases to make the model. This proposed requirement is based on EPCA's mandate that manufacturers "provide" a label and is consistent with the recent television label rules.³⁵

Third, the proposed amendments provide specifications about the format and placement of the required information on websites. In the recent television labeling proceeding, the Natural Resources Defense Council (NRDC) raised concerns that consumers must navigate several

³⁴When using the FTC icon for televisions under current requirements, sellers should not include language that might imply the icon constitutes an endorsement or an environmental claim. For example, adding the words "EnergyGuide Rated" near the icon could suggest that the icon represents a product endorsement or a "green" claim about the product, rather than a neutral disclosure of energy costs. Such language may be deceptive under section 5 of the FTC Act, 15 U.S.C. 45. If the Commission finalizes the proposed catalog amendments, marketers will have to follow the same approach for other products.

³⁵42 U.S.C. 6296(a); 76 FR 1038. Catalog sellers (both paper and websites) may create their own versions of the labels rather than using the images provided by the manufacturers, as long as the labels conform to all the specifications in the amended Rule.

layers of information to obtain EnergyGuide information on some websites.³⁶ NRDC argued consumers should not have to scroll down or switch to another tab or page to see the icon.³⁷ To address these concerns, the Commission proposes to require that the label or icon be displayed “clearly and conspicuously and in close proximity to the covered product’s price.” This proposal, which is consistent with the new television label requirements, should help ensure that consumers can easily view the label or icon while shopping online without excessive scrolling or clicking, and still providing flexibility to website designers. To minimize burden, the label or icon would only need to appear on “each webpage that contains a detailed description of the covered product and its price,” rather than alongside every image of a covered product on the site. This would reduce the burden for websites that include abbreviated summary pages listing several different models with links to a more detailed individual product page.³⁸

Finally, for paper catalogs, the amendments would continue to allow an abbreviated text disclosure in lieu of the full label. Due to the space and cost constraints involved with paper catalogs, inclusion of the entire label may be impractical.³⁹

³⁶See NRDC comments, Aug. 10, 2010, #547194-00011.
(<http://www.ftc.gov/os/comments/tvenerylabelsnpnm/547194-00011.pdf>).

³⁷76 FR at 1046.

³⁸Similarly, the proposed amendments would require that website disclosures for required non-label markings or text (*e.g.*, gallons per minute for showerheads and faucets) must be displayed clearly and conspicuously and in close proximity to the product’s price on the web page. The amendments would not impose any design or font size requirements for these disclosures, other than that they be clear and conspicuous.

³⁹The proposed amendments also state that if paper catalogs display more than one covered product model on a page, the seller may disclose the utility rates or usage assumptions underlying the energy information (*i.e.*, 10.65 cents per kWh, 8 cycles per week, etc.) only once per page for each type of product (*e.g.*, a single footnote for all refrigerators advertised on the

The Commission seeks comment on these proposals. In particular, comments should address whether the Rule should require paper catalogs to place these required disclosures in close proximity to the product's price, as the proposed amendments would require for websites. The Commission also seeks information on whether the various formats and space limitations associated with paper catalogs would render such a requirement impractical in many cases.

In addition, commenters should address: how the Commission's proposal would impact website usability and whether it would allow consumers to easily find EnergyGuide and Lighting Facts information online; whether the proposed amendments provide adequate guidance to website designers; the time necessary for catalog sellers and manufacturers to conform to these proposed requirements; and the costs and benefits of the proposal for businesses and consumers.

E. Ceiling Fan Labels

The Commission proposes to enhance the existing ceiling fan label by requiring estimated annual energy cost information as the primary disclosure on ceiling fan labels. The current label, which appears on product boxes, provides information on airflow (cubic feet per minute), energy use in watts, and energy efficiency (cubic feet per minute per watt). Consistent with most other EnergyGuide labels, the Commission proposes to change this current label to focus on energy cost information while presenting existing label information in a less prominent manner. As the Commission has indicated in the past, consumer research suggests energy cost “provides a clear, understandable tool to allow consumers to compare the energy performance of

page) rather than repeating the information for each advertised model. The disclosure must be clear and conspicuous.

different models.”⁴⁰ As with the EnergyGuide label for appliances, the new ceiling fan label would state that “Your cost will depend on your utility rates and use.” The proposed yellow label features the familiar “EnergyGuide” title used for appliances and televisions. The proposed usage and rate assumptions for this energy cost are six hours use per day (at high speed) and eleven cents per kWh/hour.⁴¹ To minimize the burden caused by this change, the Rule would provide manufacturers two years to change their packaging.

The Commission seeks comment on this proposal, including whether six hours per day is an appropriate usage assumption for determining estimated annual energy cost. Additionally, in recent consumer research on light bulb labels, efficiency ratings performed poorly in helping study participants choose efficient products.⁴² Comments should address whether ceiling fan labels raise similar issues and, if so, whether efficiency ratings should continue to appear on the labels. Finally, comments should address whether two years is sufficient lead time for manufacturers to come into compliance with a requirement to label packages without undue burden, or whether the changes can be made in less, or more, time.

⁴⁰72 FR 49948, 49959 (Aug. 29, 2007) (appliance labels); *see also* 75 FR 41696 (July 19, 2010) (light bulb labels); 76 FR 1038 (Jan. 6, 2011) (television labels).

⁴¹The six hour duty cycle estimate is consistent with earlier research on ceiling fans. *See* Davis Energy Group (Prepared for Pacific Gas & Electric), *Analysis of Standards Options For Ceiling Fans*, May 2004 (http://www.energy.ca.gov/appliances/2003rulemaking/documents/case_studies/CASE_Ceiling_Fan.pdf). The 11 cent electricity cost figure, which is based on DOE information, also appears on recently amended light bulb labels and television labels. *See* 75 FR 41696 and 75 FR 12470.

⁴²*See* 75 FR 41696, 41703-4 (July 19, 2010).

F. Clothes Washer Capacity

The Commission proposes to require EnergyGuide labels for clothes washers to disclose specific capacity information (*i.e.*, cubic feet). Current EnergyGuide labels indicate whether the model is a “standard” or “compact” but do not provide a specific volume (*e.g.*, 3.5 cubic feet). The vast majority of models are “standard” size, but capacity among standard models varies significantly. Therefore, the general capacity disclosure provides little assistance to consumers. A specific capacity disclosure should help consumers make important product comparisons. It would also complement recent DOE and industry efforts to ensure consistency in clothes washer capacity disclosures which would provide consumers with consistent information whether they are looking at FTC labels, manufacturer advertising, or DOE certification data.⁴³ Under the proposed amendment, manufacturers would continue to measure capacity using DOE procedures. The Commission seeks comments on this proposal, including the time needed to make the proposed changes.

G. QR Codes on EnergyGuide Labels

The Commission also seeks comments on whether to require manufacturers to place QR (“Quick Response”) codes on the EnergyGuide labels. QR codes are two dimensional black and white matrix barcodes that provide access to a Website by scanning the code with a mobile phone equipped with scanning software. If implemented, consumers could connect instantly to government websites or other sources providing detailed product information, such as the broad

⁴³See 75 FR 57556, 57575 (Sep. 21, 2010) and <http://www.aham.org/ht/a/GetDocumentAction/i/51727>.

energy impacts and greenhouse gas emissions associated with a product's use.⁴⁴

The Commission seeks comment on whether it should pursue such provisions.⁴⁵ In particular, comments should address whether the codes would be helpful to consumers in purchasing or using products, and whether they should link to any particular information about covered products. Comments should also address whether these codes raise particular technical challenges or pose any significant burdens for manufacturers. Finally, comments should address the time needed to make any proposed changes.

H. Definitions of Refrigerator and Refrigerator Freezers

On December 16, 2010,⁴⁶ DOE, as part of amendments to refrigerator test procedures, issued revised definitions for the terms “electric refrigerator” and “electric refrigerator-freezer.” The Commission proposes to conform its own definitions for these terms to ensure consistency between FTC and DOE requirements.

I. Clarification of Prohibited Acts Provision

The proposed rule would clarify penalty assessments for several non-labeling violations listed in § 305.4(b). These violations include the refusal to allow access to records, refusal to

⁴⁴Recently, DOE announced plans to work collaboratively with the FTC to provide consumers with information about the broad energy use impacts and greenhouse gas emissions of covered products. As part of this announcement, DOE described plans to consider “full-fuel-cycle” (“FFC”) measures for emissions and energy in developing energy efficiency standards. Such measures would include, for example, the energy consumed in extracting and transporting primary fuels involved in powering home appliances. Currently, DOE only considers “site” energy measures (*e.g.*, the electricity consumers use to run their appliances). 76 FR 51281 (Aug. 18, 2011).

⁴⁵This Notice does not contain specific rule language for this proposal.

⁴⁶75 FR 78810.

submit required data reports, refusal to permit FTC officials to observe testing, refusal to supply units for testing, and failure to disclose required energy information in catalogs (*i.e.*, websites and paper catalogs).⁴⁷ The current Rule does not specify the method (*e.g.*, per day) for assessing penalties for these non-labeling violations.⁴⁸

The proposed amendments would clarify that these violations are subject to civil penalties calculated on a per model per day basis.⁴⁹ For example, a manufacturer's refusal to submit required reports accrues a fine of up to \$110 per day for each model subject to the reporting requirements. In addition, a website seller's failure to post required label information accrues a fine of up to \$110 per day for each model on the website lacking the disclosure.

J. Amended Rule Title

Finally, the Commission proposes to shorten the Rule's title. When originally promulgated in 1979, the Rule applied only to appliances. Subsequently, the Rule expanded well beyond those products to include lighting, plumbing, and consumer electronics. Accordingly, the Commission proposes to change the Rule's title from "Part 305 - Rule

⁴⁷See 16 CFR 305.4(b); *see also* 42 U.S.C. 6296(b)(2)&(4) and 6303(a)(3) (data reports and records access), 6296(b)(5) (testing access), 6296(b)(3) (units for testing), and 6296(a) (catalog sales).

⁴⁸In contrast, the current Rule does provide the basis for labeling violations. Specifically, consistent with EPCA (42 U.S.C. 6303(a)), § 305.4(a) states that labeling violations are assessed on a per unit basis.

⁴⁹The per day per model basis is consistent with EPCA's enforcement provisions. *See* 42 U.S.C. 6302, 6303 and 16 CFR 305.4(a). It is also consistent with recent DOE enforcement guidance for the same and similar provisions. *See, e.g.*, DOE "Guidance on the Imposition of Civil Penalties for Violations of EPCA Conservation Standards and Certification Obligations," http://www.doe.gov/sites/prod/files/gcprod/documents/Penalty_Guidance_5_7_2010_final_%282%29.pdf.

Concerning Disclosures Regarding Energy Consumption and Water Use Of Certain Home Appliances and Other Products Required Under the Energy Policy And Conservation Act (“Appliance Labeling Rule”)” to “Part 305 - Energy And Water Use Labeling For Consumer Products Under The Energy Policy and Conservation Act (“Energy Labeling Rule”)”.

III. Section by Section Description of Proposed Changes

Rule Title: The proposed amendments would shorten the Rule’s title.

Description of Covered Products (305.3): The proposed amendments would amend the definitions for refrigerator products to ensure consistency with DOE requirements.

Prohibited Acts (305.4): The proposed amendments would clarify that civil penalties assessed per day under § 305.4(b) accrue on a per model basis.

Test Procedures (305.5): The proposed amendments would harmonize FTC test procedure requirements with DOE rules.

Manufacturer Duty to Provide Labels (305.6): The proposed revisions would require manufacturers to make copies of the EnergyGuide and Lighting Facts labels available to the public on a website at no charge.

Clothes Washer Volume (305.7): The proposed amendments would require EnergyGuide labels to disclose clothes washer capacity in cubic feet.

Submission of Data (305.8): The proposed amendments would require manufacturers to make a copy of the EnergyGuide label publicly available. They also would allow manufacturers to submit data required by § 305.8 to the DOE in lieu of submitting it to the Commission.

Appliance Label Placement (305.11): The proposed amendments would require adhesive EnergyGuide labels for all appliances with the exception of room air conditioners. The

amendments also would require a QR code on the label. Finally, the amendments would require room air conditioner manufacturers to print or affix the label on the product package.

Heating and Cooling Equipment (305.12): The proposed amendments would allow the ENERGY STAR logo on heating and cooling equipment to be wider than one inch. This minor, non-substantive change accommodates new, wider ENERGY STAR logos developed by the Environmental Protection Agency for these products.

Ceiling Fan Label Content (305.13): The proposed amendments would require Ceiling Fan labels to display an estimated annual energy cost based on six hours of use per day and eleven cents per kWh.

Television Labels (305.17): The proposed amendments would clarify the television labeling provisions by indicating that manufacturers of televisions with screen sizes of nine inches or fewer (measured diagonally) may print or affix the EnergyGuide label on the product package.⁵⁰

Catalog Requirements (305.20): The proposed amendments would require website sellers to post images of EnergyGuide and Lighting Facts labels online for the products they sell. They also revise disclosure requirements for paper and website catalogs.

⁵⁰76 FR at 1044. The Federal Register notice accompanying the television labeling amendments to the Rule stated that televisions smaller than 9" may be labeled on the box rather than on the screen. However, the final rule language did not reflect this.

IV. Regulatory Review

The Commission conducts scheduled reviews of its rules and guides in an effort to seek information about their costs and benefits as well as their regulatory and economic impact.⁵¹ In addition to the specific issues discussed above, the Commission solicits general comments on, among other things, the economic impact of, and the continuing need for, the Rule; possible conflicts between the Rule and state, local, or other federal laws; and the effect on the Rule of any technological, economic, or other industry changes. If comments identify additional amendments that would improve the existing Rule, the Commission will consider issuing a supplemental notice seeking comments on such changes.

The Commission is interested in receiving data, surveys and other empirical evidence to support comments submitted in response to this notice. As part of the regulatory review, the Commission is particularly interested in receiving comments and supporting data in response to the following questions:

⁵¹In comments responding to the Commission's recently published Ten-Year Regulatory Review Schedule (76 FR 41150 (July 13, 2011)), the Association of Home Appliance Manufacturers ("AHAM") and Whirlpool Corporation ("Whirlpool"), urged the Commission to reconsider its earlier decision to accelerate review of the Appliance Labeling Rule. The two comments are available at <http://www.ftc.gov/os/comments/regulatoryreviewschedule/index.shtm>. AHAM asserted, and Whirlpool concurred, that the Commission should avoid frequent rule revisions unless existing requirements are outdated, overly burdensome, or deficient. However, the Rule warrants a comprehensive review at this time to allow the Commission to consider burden reductions associated with existing reporting requirements, explore ways to reduce the number of labels missing in showrooms, improve access to label information on retail websites, and consider whether additional consumer products should have energy labels. Therefore, the Commission has proceeded with the Rule's scheduled review. AHAM's comments also recommended that the Commission reduce duplicative FTC and DOE reporting requirements. The amendments proposed in the present Notice address these concerns. Finally, AHAM urged a reduction in the amount of information collected in DOE's certification reports. The FTC will provide AHAM's comments to DOE.

- (1) Is there a continuing need for the Rule as currently promulgated? Why or why not?
- (2) What benefits has the Rule provided to, or what significant costs has the Rule imposed on, consumers? Provide any evidence supporting your position.
- (3) What modifications, if any, should the Commission make to the Rule to increase its benefits or reduce its costs to consumers?
 - (a) Provide any evidence supporting your proposed modifications.
 - (b) How would these modifications affect the costs and benefits of the Rule for consumers?
 - (c) How would these modifications affect the costs and benefits of the Rule for businesses, particularly small businesses?
- (4) What impact has the Rule had on the flow of truthful information to consumers and on the flow of deceptive information to consumers? Provide any evidence supporting your position.
- (5) What benefits, if any, has the Rule provided to, or what significant costs, including costs of compliance, has the Rule imposed on businesses, particularly small businesses? Provide any evidence supporting your position.
- (6) What modifications, if any, should be made to the Rule to increase its benefits or reduce its costs to businesses, particularly small businesses?
 - (a) Provide any evidence supporting your proposed modifications.
 - (b) How would these modifications affect the costs and benefits of the Rule for consumers?

- (c) How would these modifications affect the costs and benefits of the Rule for businesses, particularly small businesses?
- (7) Provide any evidence concerning the degree of industry compliance with the Rule. Does this evidence indicate that the Rule should be modified? If so, why, and how? If not, why not?
- (8) Provide any evidence concerning whether any of the Rule's provisions are no longer necessary. Explain why these provisions are unnecessary.
- (9) What modifications, if any, should be made to the Rule to account for current or impending changes in technology or economic conditions?
 - (a) Provide any evidence supporting the proposed modifications.
 - (b) How would these modifications affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses?
- (10) Does the Rule overlap or conflict with other federal, state, or local laws or regulations? If so, how?
 - (a) Provide any evidence supporting your position.
 - (b) With reference to the asserted conflicts, should the Rule be modified? If so, why, and how? If not, why not?
 - (c) Provide any evidence concerning whether the Rule has assisted in promoting national consistency with respect to energy labeling.
- (11) Are there foreign or international laws, regulations, or standards with respect to energy labeling that the Commission should consider as it reviews the Rule? If so, what are they?

- (a) Should the Rule be modified in order to harmonize with these international laws, regulations, or standards? If so, why, and how? If not, why not?
 - (b) How would such harmonization affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses?
 - (c) Provide any evidence supporting your position.
- (12) Are there any consumer products, not currently under review, that the Commission should consider for energy labeling?
- (13) Is there any information not submitted in earlier proceedings that the Commission should consider about possible consumer electronics labeling?⁵²
 - (a) Are there any new developments in test procedures for consumer electronics relevant to possible labeling requirements?
 - (b) Are there new consumer electronics products on the market that the Commission should consider for consumer energy labeling?
 - (c) Is there new information consumer electronics marketing or buying patterns that would aid the Commission in considering new labeling requirements?
- (14) Is our business compliance guidance and consumer education about the Rules useful? Can they be improved? If so, how? Should the Commission print copies of these materials, or is a pdf at www.business.ftc.gov sufficient for business and consumer needs?

⁵²76 FR 1038 (Jan. 6, 2011) (Federal Register Notice on consumer electronics labeling).

VI. Request for Comment

The Commission invites interested persons to submit written comments on any issue of fact, law, or policy that may bear upon the FTC's proposed labeling requirements. Please provide explanations for your answers and supporting evidence where appropriate. After examining the comments, the Commission will determine whether to issue final amendments.

All comments should be filed as prescribed below, and must be received by May 16, 2012. Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to "Appliance Labeling Amendments, Matter No. R611004" to facilitate the organization of comments. Please note that your comment – including your name and your state – will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at <http://www.ftc.gov/os/publiccomments.shtm>.

Because comments will be made public, they should not include any sensitive personal information, such as any individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include "[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential" as provided in Section 6(f) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing matter for which confidential treatment is requested must be filed in paper form, must be clearly labeled

“Confidential,” and must comply with FTC Rule 4.9(c).⁵³

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted using the following weblink:

<https://ftcpublic.commentworks.com/ftc/energylabelingamendmentsnprm> (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink

<https://ftcpublic.commentworks.com/ftc/energylabelingamendmentsnprm>. If this Notice appears at <http://www.regulations.gov/#!home>, you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC Website at <http://www.ftc.gov> to read the Notice and the news release describing it.

A comment filed in paper form should include the “Appliance Labeling Amendments, Matter No. R611004” reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex A), 600 Pennsylvania Avenue, N.W., Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

⁵³The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission’s General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

Because written comments appear adequate to present the views of all interested parties, the Commission has not scheduled an oral hearing regarding these proposed amendments. Interested parties may request an opportunity to present views orally. If such a request is made, the Commission will publish a document in the Federal Register stating the time and place for such oral presentation(s) and describing the procedures that will be followed. Interested parties who wish to present oral views must submit a hearing request, on or before March 20, 2012, in the form of a written comment that describes the issues on which the party wishes to speak. If there is no oral hearing, the Commission will base its decision on the written rulemaking record.

VII. Paperwork Reduction Act

The current Rule contains recordkeeping, disclosure, testing, and reporting requirements that constitute "information collection requirements" as defined by 5 CFR 1320.3(c), the regulation that implements the Paperwork Reduction Act (PRA).⁵⁴ OMB has approved the

⁵⁴44 U.S.C. 3501-3521.

Rule's existing information collection requirements through Jan. 31, 2014 (OMB Control No. 3084-0069). As described below, the proposed amendments modify (to a minor degree) the current Rule's existing labeling and reporting requirements.⁵⁵ Accordingly, the Commission is submitting this proposed Rule and an associated PRA Supporting Statement to OMB for review.

Manufacturer EnergyGuide Images Online: The proposed Rule requires manufacturers to post images of their EnergyGuide and Lighting Facts labels on their websites. Given approximately 15,000 total models⁵⁶ at an estimated five minutes per model,⁵⁷ this requirement will entail a burden of 1,250 hours.⁵⁸ Assuming that the additional disclosure requirement will be implemented by graphic designers at a mean hourly wage of \$23.42 per hour,⁵⁹ the associated labor cost would approximate \$29,300 per year.

Adhesive EnergyGuide Labels: The proposed amendments would require manufacturers of products with the EnergyGuide label to change information on the label and, in some cases, convert their labels from hang tags to adhesive labels. Under the current Rule, manufacturers

⁵⁵For reporting requirements, the amendments allow manufacturers to submit data to the DOE in lieu of the FTC. This will not affect the PRA burden because the Rule, as directed by the EPCA, will continue to require reporting to the FTC, even if manufacturers may fulfill that requirement by reporting to the DOE.

⁵⁶This is an FTC staff estimate based on data submitted by manufacturers to the FTC pursuant to the current Rule.

⁵⁷This estimate is based on FTC staff's general knowledge of manufacturing practices.

⁵⁸Unlike retail websites that already have established webpages for the products they offer, some manufacturers may have to create new webpages for posting these requirements. Accordingly, the burden estimate for manufacturers is higher (five minutes per model) than that for catalog sellers (one minute per model).

⁵⁹See U.S. Department of Labor, National Compensation Survey: Occupational Earnings in the United States 2010 (May 2011), Bulletin 2753, Table 3 at 3-13 ("Full-time civilian workers," mean and median hourly wages), available at <http://www.bls.gov/ncs/ncswage2010.htm>.

routinely change labels to reflect new range and cost data, which is already accounted for by previous burden analyses for the Rule. Thus, such a change should not impose any additional burden.

Ceiling Fan, Clothes Washer, and Room Air Conditioner Labels: Changes to ceiling fan, clothes washer, and room air conditioner labels should impose no additional burden. Because the amendments will provide manufacturers with ample time to make such changes, manufacturers should be able to incorporate these changes into their normal schedules for package and label printing.

Catalog Disclosures: The Commission's past estimate of the Rule's burden on catalog sellers (including Internet sellers) has assumed conservatively that catalog sellers must enter their data for each product into the catalog each year (*see, e.g.*, 71 FR 78057, 78062 (Dec. 28, 2006)).⁶⁰ The proposed amendments do not alter that assumption as they would require just a one-time change of all products in affected catalogs. This one-time adjustment is consistent with, and accounted for by this prior assumption and the associated burden estimates for catalog sellers. Accordingly, the Commission believes no modification to existing burden estimates for catalog sellers is necessary.

Estimated annual non-labor cost burden: Any capital costs associated with the amendments are likely to be minimal.

The Commission invites comments that will enable it to: (1) evaluate whether the proposed collections of information are necessary for the proper performance of the functions of

⁶⁰This assumption is conservative because the number of incremental additions to the catalog and their frequency is likely to be much lower after initial start-up efforts have been completed.

the Commission, including whether the information will have practical utility; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collections of information on those who must comply, including through the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information technology.

Comments on any proposed recordkeeping, disclosure, testing, or reporting requirements that are subject to OMB review under the PRA should additionally be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Federal Trade Commission. Comments should be submitted via facsimile to (202) 395-5167 because U.S. postal mail at the OMB is subject to lengthy delays due to heightened security precautions.

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601-612, requires that the Commission provide an Initial Regulatory Flexibility Analysis ("IRFA") with a proposed Rule and a Final Regulatory Flexibility Analysis ("FRFA"), with the final Rule, if any, unless the Commission certifies that the Rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603-605.

The Commission does not anticipate that the proposed Rule will have a significant economic impact on a substantial number of small entities. The Commission recognizes that some of the affected manufacturers may qualify as small businesses under the relevant

thresholds. However, the Commission does not expect that the requirements specified in the proposed Rule will have a significant impact on these entities because, as discussed in the previous section, the proposed amendments involve formatting changes to labels and website changes that should not have a significant impact on affected entities, including small businesses.

Accordingly, this document serves as notice to the Small Business Administration of the FTC's certification of no effect. To ensure the accuracy of this certification, however, the Commission requests comment on whether the proposed Rule will have a significant impact on a substantial number of small entities, including specific information on the number of entities that would be covered by the proposed Rule, the number of these companies that are "small entities," and the average annual burden for each entity. Although the Commission certifies under the RFA that the Rule proposed in this notice would not, if promulgated, have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an IRFA in order to inquire into the impact of the proposed Rule on small entities. Therefore, the Commission has prepared the following analysis:

A. Description of the Reasons That Action by the Agency Is Being Taken

The Commission has initiated this rulemaking to reduce the Rule's reporting burdens, increase the availability of energy labels to consumers while minimizing burdens on industry, and generally improve existing requirements.

B. Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The objective of the proposed Rule is to improve the effectiveness of the current energy labeling program which will assist consumers in their purchasing decisions while minimizing

industry burden. The legal basis for this Rule is the EPCA (42 U.S.C. 6291 *et seq.*).

C. Small Entities to Which the Proposed Rule Will Apply

Under the Small Business Size Standards issued by the Small Business Administration, the standards for various affected entities are as follows: refrigerator manufacturers - up to 1,000 employees; other appliance manufacturers - up to 500 employees; appliances stores - up to \$10 million in annual receipts; television stores - up to \$25.5 million in annual receipts, and light bulb manufacturers - up to 1,000 employees. The Commission estimates that fewer than 600 entities subject to the proposed Rule's requirements qualify as small businesses. The Commission seeks comment and information with regard to the estimated number or nature of small business entities for which the proposed Rule would have a significant economic impact

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

The Commission recognizes that the proposed labeling changes will involve some burdens on affected entities. However, the amendments should not have a significant impact on small entities. The proposed amendments would require manufacturers of products with the EnergyGuide label to change information on the label and, in some cases, convert their labels from hang tags to adhesive labels. Changes to ceiling fan, clothes washer, and room air conditioner labels should impose no additional burden because the proposed amendments should give manufacturers time to incorporate the changes into their normal label production schedules at minimal cost. Because the amendments would provide manufacturers with ample time to make such changes, manufacturers should be able to incorporate these changes into their normal schedules for package and label printing. Online sellers would have to make changes to ensure their websites provide the full EnergyGuide or Lighting Facts label. There should be no capital

costs associated with the amendments. The Commission invites comment and information on these issues.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any other federal statutes, rules, or policies that would duplicate, overlap, or conflict with the proposed Rule. In fact, the proposed amendments should reduce duplication between FTC and DOE reporting requirements.

F. Significant Alternatives to the Proposed Rule

The Commission seeks comment and information on the need, if any, for alternative compliance methods that, consistent with the statutory requirements, would reduce the economic impact of the rule on such small entities. As one alternative to reduce burden, the Commission could delay the effective date of the amendments to provide additional time for small business compliance. In addition, the Commission could consider different compliance dates, reporting requirements, or exemptions for small entities. Comments filed in response to this notice should identify small entities that are affected by the Rule, as well as alternative methods of compliance that would reduce the economic impact of the Rule on small entities. The Commission will consider the feasibility of such alternatives and determine whether they should be incorporated into the final rule.

IX. Communications by Outside Parties to the Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding, from any outside party to any Commissioner or Commissioner's advisor, will be placed on the public record. *See* 16 CFR 1.26(b)(5).

X. Proposed Rule Language

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

For the reasons set out above, the Commission proposes the following amendments to 16 CFR part 305:

Part 305 - Energy and Water Use Labeling For Consumer Products Under the Energy Policy and Conservation Act ("Energy Labeling Rule")

1. The authority citation for part 305 continues to read as follows:

AUTHORITY: 42 U.S.C. 6294.

2. In § 305.3, revise paragraph (a)(1) and (2) to read as follows:

§ 305.3 Description of covered products.

(a)(1) Electric refrigerator means a cabinet designed for the refrigerated storage of food, designed to be capable of achieving storage temperatures above 32 °F (0 °C) and below 39 °F (3.9 °C), and having a source of refrigeration requiring single phase, alternating current electric energy input only. An electric refrigerator may include a compartment for the freezing and storage of food at temperatures below 32°F (0 °C), but does not provide a separate low temperature compartment designed for the freezing and storage of food at temperatures below 8°F (-13.3 °C).

(2) Electric refrigerator-freezer means a cabinet which consists of two or more compartments with at least one of the compartments designed for the refrigerated storage of food and designed to be capable of achieving storage temperatures above 32 °F (0 °C) and below 39 °F (3.9 °C), and with at least one of the compartments designed for the freezing and storage of food at

temperatures below 8 °F (-13.3 °C) which may be adjusted by the user to a temperature of 0 °F (-17.8 °C) or below. The source of refrigeration requires single phase, alternating current electric energy input only.

* * * * *

3. In § 305.4, revise paragraph (b) to read as follows:

§ 305.4 Prohibited acts.

* * * * *

(b) Subject to enforcement penalties assessed per model per day of violation pursuant to 42 U.S.C. 6303 and adjusted for inflation by § 1.98 of this chapter, it shall be unlawful for any manufacturer or private labeler knowingly to:

* * * * *

4. Section 305.5 is revised to read as follows:

§ 305.5 Determinations of estimated annual energy consumption, estimated annual operating cost, and energy efficiency rating, water use rate, and other required disclosure content.

(a) Unless otherwise stated in paragraphs (b), (c), (d), or (e) of this section, the content of any disclosures required by this part must be determined in accordance with the procedures required by the Department of Energy as set forth in 10 CFR part 430, including test procedures in §430.23, sampling procedures in §430.24, laboratory accreditation in §430.25 for information

required to be submitted to the Department, and testing procedure waivers granted pursuant to §430.27.

(b) For any representations required by this part but not subject to 10 CFR part 430 requirements and not otherwise specified in this section, manufacturers and private labelers of any covered product must possess and rely upon a reasonable basis consisting of competent and reliable scientific tests and procedures substantiating the representation.

(c) For representations of the light output for general service light-emitting diode (LED or OLED) lamps, the Commission will accept as a reasonable basis scientific tests conducted according to IES LM79.

(d) Determinations of estimated annual energy consumption and estimated annual operating (energy) costs of televisions must be based on the procedures contained in the ENERGY STAR Version 4.2 test, which is comprised of the ENERGY STAR Program Requirements, Product Specification for Televisions, Eligibility Criteria Version 4.2 (Adopted April 30, 2010); the Test Method (Revised Aug–2010); and the CEA Procedure for DAM Testing: For TVs, Revision 0.3 (Sept. 8, 2010). Annual energy consumption and cost estimates must be derived assuming 5 hours in on mode and 19 hours in sleep (standby) mode per day. These ENERGY STAR requirements are incorporated by reference into this section. The Director of the Federal Register has approved these incorporations by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the test procedure may be inspected or obtained at the United States Environmental Protection Agency, ENERGY STAR Hotline (6202J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or at

http://www.energystar.gov/ia/partners/product_specs/program_reqs/Televisions_Program_Requi

[rements.pdf](#) [Telephone: ENERGY STAR Hotline: 1-888-782-7937]; at the Federal Trade Commission, Consumer Response Center, Room 130, 600 Pennsylvania Avenue, NW., Washington, DC 20580 [Telephone: 1-202-326-2830]; and at the National Archives and Records Administration, at <http://www.archives.gov/federal-register/cfr/ibr-locations.html> [Telephone: 1-202-741-6030].

(e) Representations for ceiling fans under section 305.13 must be derived from procedures in 10 CFR § 430.23.

5. Section 305.6 is revised to read as follows:

§ 305.6 Manufacturer duty to provide labels.

For each covered product that a manufacturer distributes in commerce which is required by this part to bear an EnergyGuide or Lighting Facts label, the manufacturer must make a copy of the label available on a publicly accessible website in a manner that allows catalog sellers to hyperlink to the label or download it for use in websites or paper catalogs. The labels must remain on the website for two years after the manufacturer ceases the model's production.

6. In § 305.7, revise paragraph (g) to read as follows:

§ 305.7 Determination of capacity.

* * * * *

(g) Clothes washers. The capacity shall be the tub capacity as determined according to appendix J1 to 10 CFR part 430, expressed as cubic feet rounded to the nearest tenth of a foot.

* * * * *

7. In § 305.8, paragraph (a)(1) is revised to read as follows:

§ 305.8 Submission of data.

(a)(1) Except as provided in paragraphs (a)(2) and (a)(3) of this section, each manufacturer of a covered product subject to the disclosure requirements of this part and subject to Department of Energy certification requirements in 10 CFR part 430 shall submit annually a report for each model in current production containing the same information that must be submitted to the Department of Energy pursuant to 10 CFR part 430 for that product, and that the Department has identified as public information pursuant to 10 CFR Part 429. In lieu of submitting the required information to the Commission as required by this section, manufacturers may submit such information to the Department of Energy via the Compliance and Certification Management System (CCMS) at <https://regulations.doe.gov/ccms> as provided by 10 CFR § 430.62.

(2) Manufacturers or private labelers of ceiling fans shall submit annually a report containing the brand name, model number, diameter (in inches), wattage at high speed excluding any lights, and airflow (capacity) at high speed for each basic model in current production.

(3) This section does not require reports for televisions and general service light-emitting diode (LED or OLED) lamps.

* * * * *

8. In § 305.11, paragraphs (d) and (e) are revised to read as follows:

305.11 Labeling for refrigerators, refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, room air conditioners, and pool heaters.

* * * * *

(d) Label type. (1) Except for room air conditioners as provided in paragraph (d)(2),

manufacturers or private labelers must affix the labels to the product in the form of an adhesive label before distribution of the product into commerce. The adhesive labels should be applied so they can be easily removed without the use of tools or liquids, other than water, but should be applied with an adhesion capacity sufficient to prevent their dislodgment during normal handling throughout the chain of distribution to the consumer. The paper stock for pressure-sensitive or other adhesive labels shall have a basic weight of not less than 58 pounds per 500 sheets (25" x 38") or equivalent, exclusive of the release liner and adhesive. A minimum peel adhesion capacity for the adhesive of 12 ounces per square inch is suggested, but not required if the adhesive can otherwise meet the requirements of this paragraph.

(2) Labels for room air conditioners shall be printed on or affixed to the principal display panel of the product's packaging.

(e) *Placement.* Manufacturers shall affix adhesive labels to the covered products before distribution into commerce in such a position that it is easily read by a consumer examining the product. The label generally should be located on the upper-right-front corner of the product's front exterior. However, some other prominent location, including a prominent location in the product's interior, may be used as long as the label will not become dislodged during normal handling throughout the chain of distribution to the retailer or consumer. The top of the label should not exceed 74 inches from the base of taller products. The label can be displayed in the form of a flap tag adhered to the top of the appliance and bent (folded at 90°) to hang over the front, as long as this can be done with assurance that it will be readily visible and will not become dislodged.

* * * * *

9. Section 305.12, paragraphs (f)(8)(iii) and (g)(9)(iii) are revised to read as follows:

§ 305.12 Labeling for central air conditioners, heat pumps, and furnaces.

* * * * *

(f) * * *

(8) * * *

(iii) The manufacturer may include the ENERGY STAR logo on the bottom right corner of the label for qualified products. The logo must be 1 inch high and no greater than 3 inches wide. Only manufacturers that have signed a Memorandum of Understanding with the Department of Energy or the Environmental Protection Agency may add the ENERGY STAR logo to labels on qualifying covered products; such manufacturers may add the ENERGY STAR logo to labels only on those covered products that are contemplated by the Memorandum of Understanding.

(g) * * *

(9) * * *

(iii) The manufacturer may include the ENERGY STAR logo on the bottom right corner of the label for qualified products. The logo must be 1 inch high and no greater than 3 inches wide. Only manufacturers that have signed a Memorandum of Understanding with the Department of Energy or the Environmental Protection Agency may add the ENERGY STAR logo to labels on qualifying covered products; such manufacturers may add the ENERGY STAR logo to labels only on those covered products that are contemplated by the Memorandum of Understanding.

10. In § 305.13 paragraph (a) is revised to read as follows:

§ 305.13 Labeling for ceiling fans.

(a) *Ceiling fans* –

(1) *Content.* Any covered product that is a ceiling fan shall be labeled clearly and conspicuously on the package's principal display panel with the following information in order from top to bottom on the label:

(i) Headlines and text as illustrated in the prototype and sample labels in Appendix L to this part;

(ii) the product's estimated annual operating cost based on 6 hours use per day and 11 cents per kWh.

(iii) The product's airflow at high speed expressed in cubic feet per minute and determined pursuant to §305.5 of this part;

(iv) The product's electricity usage at high speed expressed in watts and determined pursuant to §305.5 of this part as indicated in Ceiling Fan Label Illustration of appendix L of this part;

(v) The following statement shall appear on the label for fans fewer than 49 inches in diameter:

“Compare: 36” to 48” ceiling fans have an estimated yearly energy cost ranging from approximately \$2 to \$53.”;

(vi) The following statement shall appear on the label for fans 49 inches or more in diameter:

“Compare: 49” to 60” ceiling fans have an estimated yearly energy cost ranging from approximately \$3 to \$29.”; and

(vii) The ENERGY STAR logo as illustrated on the ceiling fan label illustration in Appendix L for qualified products, if desired by the manufacturer. Only manufacturers that have signed a Memorandum of Understanding with the Department of Energy or the Environmental Protection

Agency may add the ENERGY STAR logo to labels on qualifying covered products; such manufacturers may add the ENERGY STAR logo to labels only on those products that are covered by the Memorandum of Understanding;

(2) *Label size, color, and text font.* The label shall be four inches wide and three inches high.

The label colors shall be process black text on a process yellow background. The text font shall be Arial or another equivalent font. The text on the label shall be black with a white background. The label's text size, format, content, and the order of the required disclosures shall be consistent with ceiling fan label illustration of appendix L of this part.

(3) *Placement.* The ceiling fan label shall be printed on or affixed to the principal display panel of the product's packaging.

(4) *Additional information.* No marks or information other than that specified in this part shall appear on this label, except a model name, number, or similar identifying information.

* * * * *

11. Section 305.17, paragraphs (d), (e), (e)(1), are revised and (h) is added to read as follows:

§ 305.17 Television labeling.

* * * * *

(d) *Label types.* Except as provided in paragraph (i), the labels must be affixed to the product in the form of either an adhesive label, cling label, or alternative label as follows:

* * * * *

(e) *Placement* – (1) In general. Except as provided in paragraph (i), all labels must be clear and conspicuous to consumers viewing the television screen from the front.

* * * * *

(h) *Labels for small televisions:* For television with screens measuring nine inches or less diagonally, manufacturers may print the label required by this section on the primary display panel of the product's packaging or affix a label to the packaging in lieu of affixing a label to the television screen or bezel. The size of the label may be scaled to fit the packaging size as appropriate, as long as it remains clear and conspicuous.

* * * * *

12. Section 305.20 is revised to read as follows:

§ 305.20 Paper catalogs and websites.

(a) *Covered products offered for sale on the Internet.* Any manufacturer, distributor, retailer, or private labeler who advertises a covered product on an Internet website in a manner that qualifies as a catalog under this Part shall disclose energy information as follows:

(1) *Content.*

(i) *Products required to bear EnergyGuide or Lighting Facts labels.* All websites advertising covered refrigerators, refrigerator-freezers, freezers, room air conditioners, clothes washers, dishwashers, ceiling fans, pool heaters, central air conditioners, heat pumps, furnaces, general service lamps, and televisions must display, for each model, an image of the label required for that product by this Part. The website may hyperlink to the image of the label using the icon depicted in Appendix L.

(ii) *Products not required to bear EnergyGuide or Lighting Facts labels.* All websites advertising covered showerheads, faucets, water closets, urinals, general service fluorescent lamps, fluorescent lamp ballasts, and metal halide lamp fixtures must include the following disclosures for each covered product:

(A) *Showerheads, faucets, water closets, and urinals.* The product's water use, expressed in gallons and liters per minute (gpm and L/min) or per cycle (gpc and L/cycle) or gallons and liters per flush (gpf and Lpf) as specified in §305.16.

(B) *General service fluorescent lamps, fluorescent lamp ballasts and luminaires and metal halide lamp fixtures.* A capital letter "E" printed within a circle.

(2) *Format.* The required website disclosures, whether label image, icon, or text, must appear clearly and conspicuously and in close proximity to the covered product's price on each webpage that contains a detailed description of the covered product and its price. The label and hyperlink icon must conform to the prototypes in Appendix L, but may be altered in size to accommodate the webpage's design, as long as they remain clear and conspicuous to consumers viewing the page.

(b) *Covered products offered for sale in paper catalogs.* Any manufacturer, distributor, retailer, or private labeler that advertises a covered product in a paper publication that qualifies as a catalog under this Part shall disclose energy information as follows:

(1) *Content.*

(i) *Products required to bear EnergyGuide or Lighting Facts labels.* All paper catalogs advertising covered products required by this Part to bear EnergyGuide or Lighting Facts labels illustrated in Appendix L (refrigerators, refrigerator-freezers, freezers, room air conditioners, clothes washers, dishwashers, ceiling fans, pool heaters, central air conditioners, heat pumps, furnaces, general service fluorescent lamps, general service lamps, and televisions) must either display an image of the full label prepared in accordance with this Part, or make a text disclosure as follows:

(A) *Refrigerator, refrigerator-freezer, and freezer.* The capacity of the model determined in accordance with § 305.7, the estimated annual operating cost determined in accordance with §305.5 and appendix K of this Part, and a disclosure stating “Your energy cost depends on your utility rates and use. The estimated cost is based on 11 cents per kWh and TK hours of use per day. For more information, visit www.ftc.gov/energy.”

(B) *Room air conditioners and water heaters.* The capacity of the model determined in accordance with § 305.7, the estimated annual operating cost determined in accordance with §305.5 and appendix K of this Part, and a disclosure stating “Your operating costs will depend on your utility rates and use. The estimated operating cost is based on a national average [electricity, natural gas, propane, or oil] cost of [\$ __ per kWh, therm, or gallon]. For more information, visit www.ftc.gov/energy.”

(C) *Clothes washers and dishwashers.* The capacity of the model determined in accordance with § 305.7 and the estimated annual operating cost determined in accordance with §305.5 and appendix K, and a disclosure stating “Your energy cost depends on your utility rates and use. The estimated cost is based on [4 washloads a week for dishwashers, or 8 washloads a week for clothes washers] and 11 cents per kWh for electricity and \$__ per therm for natural gas. For more information, visit www.ftc.gov/energy.”

(D) *General service fluorescent lamps or general service lamps.* All the information concerning that lamp required by § 305.15 of this part to be disclosed on the lamp’s package, and a disclosure stating “Your energy cost depends on your utility rates and use. The estimated cost and life is based on 11 cents per kWh and 3 hours of use per day. For more information, visit www.ftc.gov/energy.” For the “Light Appearance” disclosure required by § 305.15(b)(3)(iv), the

catalog need only disclose the lamp's correlated color temperature in Kelvin (e.g., 2700 K).

General service fluorescent lamps or incandescent reflector lamps must also include a capital letter "E" printed within a circle and the statement described in § 305.15(d)(1).

(E) *Ceiling fans*. All the information required by § 305.13.

(F) *Televisions*. The estimated annual operating cost determined in accordance with § 305.5 and a disclosure stating "Your energy cost depends on your utility rates and use. The estimated cost is based on 11 cents per kWh and 5 hours of use per day. For more information, visit www.ftc.gov/energy."

(ii) *Products not required to bear EnergyGuide or Lighting Facts labels*. All websites advertising covered products not required by this Part to bear labels with specific design characteristics illustrated in Appendix L (showerheads, faucets, water closets, urinals, fluorescent lamp ballasts, and metal halide lamp fixtures) must make a text disclosure for each covered product identical to those required for Internet disclosures under § 305.20(a)(1)(iii).

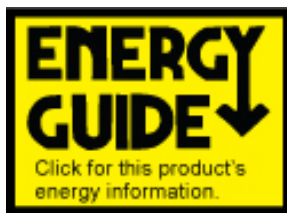
(2) *Format*. The required disclosures, whether text, label image, or icon, must appear clearly and conspicuously on each page that contains a detailed description of the covered product and its price. If a catalog displays an image of the full label, the size of the label may be altered to accommodate the catalog's design, as long as the label remains clear and conspicuous to consumers. For text disclosures made pursuant to 305.20(b)(1)(i) and (ii), the required disclosure may be displayed once per page per type of product if the catalog offers multiple

covered products of the same type on a page, as long as the disclosure remains clear and conspicuous.

13. Revise Appendix L by revising Sample Icon 17, adding Sample Icon 18, and revising Ceiling Fan Illustration to read as follows:

Appendix L to Part 305 - Sample Labels

* * * *

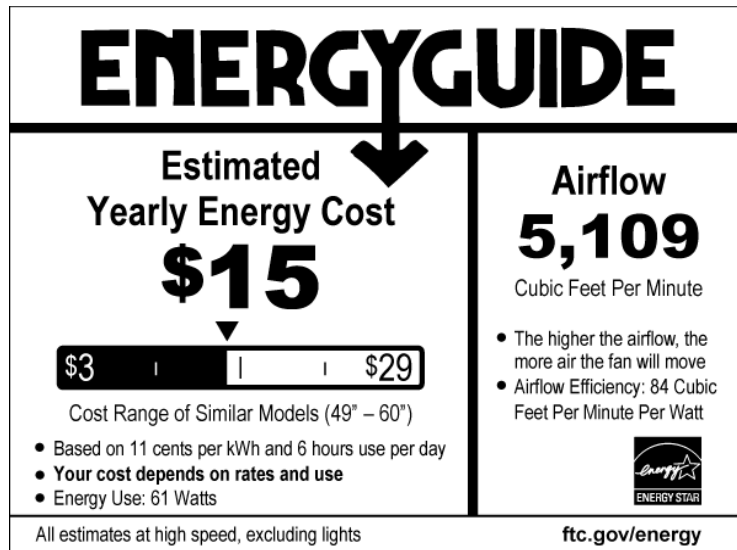


SAMPLE ICON 17



SAMPLE ICON 18

* * * * *



Ceiling Fan Label Illustration

By direction of the Commission.

Donald S. Clark
 Secretary.

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